

**REMARKS**

Claims 1 – 9 and 11 - 32 are pending in the application. Claim 10 has been canceled without prejudice. Claims 1 and 11 have been amended.

Applicant respectfully asserts that the Examiner did not take the preliminary amendment into account when he examined the claims. The preliminary amendment was filed on 21 January 2004 with the application. A copy of the post card showing receipt of the preliminary amendment is enclosed as Exhibit A. Further, no Notice to File Missing Parts of Non-Provisional Application was issued. If the USPTO had not received all pages of the preliminary amendment, a Notice to File Missing Parts would have issued requiring payment of the fee under 37 CFR §1.16(i) for additional claims and the multiple dependant claims fee set forth in 37 CFR. §1.16(j).

The Examiner failed to examine claims 28 – 32 set forth in the preliminary amendment and thus Applicant respectfully requests examination on the merits of claims 28 – 35.

Further, the Examiner objected to claims 21, 22 and 25 under 37 CFR §1.75(c) as being multiple dependant claims. Claims 21, 22 and 25 were amended in the preliminary amendment. Accordingly applicant asserts that no correction is necessary.

Claims 1 and 2 were rejected under 35 USC §103(a) as being unpatentable over US Patent No. 6,431,177 (*Sieggen*). Claims 4, 5, 8 – 11, 17 and 18 were also rejected under 35 USC §103(a) as being unpatentable over *Sieggen*. Claims 4, 5, 8, 9, 17 and 18 depend directly or indirectly from claim 1.

*Sieggen* discloses a cigarette extinguisher in which the cigarette is extinguished by the lack of combustible gases. The *Sieggen* device has a flange 26 which also acts as a seal preventing air from entering the enclosure. (See, *Sieggen* at column 3, Lines 41 to 45.) In contrast, the present invention provides a closure body the thermal capacity of which is so selected as to ensure that the ember of a cigarette or a cigar, which is pressed against the closure body, will be extinguished within a few seconds.

*Sieggen* teaches to provide a plurality of a partitions 36 extending within the interiors space between the closed ends 24, 34 of the first 20 and second 30 members. This structure of partitions 36 and air spaces Inhibits a heat exchange between the closed ends 24, 34. More particularly, heat from a lit cigarette 12 inserted into the second member 30 is diminished and the rate of transfer is slowed as it is distributed into the plurality of air spaces and through multiple partitions. Thus, the heat from a lit cigarette is not efficiently transferred to the non-heat resistant surface of the first member 20 and is not felt by the user. (See, *Sieggen* at column 3 lines 12-25). In contrast, the present invention ensures that there is a rapid transfer of heat from a cigarette to the closure body, the thermal capacity of which is sufficiently high to

extinguish the cigarette within a few seconds. *Sieggen* does not teach or suggest an ash collector with all the limitations of claim 1. Further, *Sieggen* teaches away from the present invention as defined in claim 1. Accordingly, claims 1 – 9 and 12 – 32 are patentable over *Sieggen*.

Claim 11 has been rewritten into independent form. Independent claim 11 contains all the limitations of claim 1 and contains the further limitation that "when a cigar or a cigarette is stubbed out in a recess of the closure body, the temperature of its outer surface will not rise above 50° Celsius." As discussed above, *Sieggen* does not teach or suggest an ash collector with all the limitations of claim 11. Further, the thermal capacity of the inventive ash collector of claim 11 is so high that the temperature of the outer surface of the closure body will not rise above 50 °C. Claim 11 gives a clear teaching that the thermal capacity should be high enough to avoid that the outer surface temperature of the closure body will rise above 50 °C. Accordingly, claim 11 is patentable over *Sieggen*.

Claim 3 was rejected under 35 USC §103(a) as being unpatentable over *Sieggen* as applied to claims 1 and 2 in view of US Patent No. 3,405,719 (*Lustbader*). Claims 13 – 16 were also rejected under 35 USC §103(a) as being unpatentable over *Sieggen* in view of *Lustbader*. Claim 3 and 13 – 16 depend directly or indirectly from claim 1 and thus contains all the limitations of claim 1. Accordingly, for the reasons discussed above, *Sieggen* does not teach or suggest an ash collector with all the limitations of claims 3 or 13 - 16. *Lustbader* does not make up the deficiencies in *Sieggen*. *Lustbader* discloses a device for safely retaining a lighted cigarette, which should not be extinguished, but kept lighted. Accordingly, claims 3 and 13 – 16 are patentable over *Sieggen* and/or *Lustbader* alone or in combination.

Claims 6 and 7 were rejected under 35 USC §103(a) as being unpatentable over *Sieggen* as applied to claim 1 in view of US Patent No. 5,862,809 (*Nicotra*). Claims 6 and 7 depend from claim 1. Accordingly, for the reasons discussed above, *Sieggen* does not teach or suggest an ash collector with all the limitations of claims 6 and 7. *Nicotra* does not make up the deficiencies in *Sieggen*. *Nicotra* discloses a cigar holder comprising an air tight container for rapidly extinguishing the lighted cigar, namely by preventing air entering the sealed container, (See *Nicotra* at column 2, lines 21 to 38.) There is not disclosed a closure body having a high thermal capacity, high enough to extinguish the glowing cigar. Accordingly, claims 6 and 7 are patentable over *Sieggen* and/or *Nicotra* alone or in combination.

Claim 12 was rejected under 35 USC §103(a) as being unpatentable over *Sieggen* as applied to claim 1 in view of US Patent No. 5,499,634 (*Hermann*). Claim 12 depends from claim 1. Accordingly, for the reasons discussed above, *Sieggen* does not teach or

suggest an ash collector with all the limitations of claim 12. *Hermann* does not make up the deficiencies in *Sieggen*. *Hermann* discloses a cigarette snuffer in which a lighted tobacco product is extinguished by placing it into the holder that is closed so that a minimum amount of air is available in the closed holder so that combustion will end due to lack of air, (See, *Hermann* at column 3, lines 41 to 52.) *Sieggen* and/or *Hermann* alone or in combination do not teach or suggest the inventive ash collector of Claim 12. Accordingly, claim 12 is patentable over *Sieggen* and/or *Hermann* alone or in combination.

Claims 19 - 22 were rejected under 35 USC §103(a) as being unpatentable over *Sieggen* as applied to claim 1 in view of US Patent No. 4,996,995 (*Kojima*). Claims 19 - 22 depend from claim 1. Accordingly, for the reasons discussed above, *Sieggen* does not teach or suggest an ash collector with all the limitations of claims 19 - 22. *Kojima* does not make up the deficiencies in *Sieggen*. *Kojima* does not teach or suggest a structure similar to the inventive ash collector. Accordingly, claims 19 - 22 are patentable over *Sieggen* and/or *Kojima* alone or in combination.

Claims 24 - 27 were rejected under 35 USC §103(a) as being unpatentable over *Sieggen* as applied to claim 1 in view of US Patent No. 5,605,226 (*Hernlein*). Claims 24 - 27 depend from claim 1. Accordingly, for the reasons discussed above, *Sieggen* does not teach or suggest an ash collector with all the limitations of claims 19 - 22. *Hernlein* does not make up the deficiencies in *Sieggen*. *Hernlein* does not teach or suggest a structure similar to the inventive ash collector. Accordingly, claims 19 - 22 are patentable over *Sieggen* and/or *Hernlein* alone or in combination.

### **CONCLUSION**

Having obviated the Examiner's objections, Applicant hereby seeks and early indication of allowance.

### **PETITION FOR AN EXTENSION OF THE TERM**

Applicant petitions the Commissioner of the United States Patent and Trademark Office to extend the time for reply to the Office action dated 12 July 2005 for 2-month(s) from October 12, 2005 to December 12, 2005. Submitted herewith is a check for \$225 to cover the cost of the extension. Any deficiency or overpayment should be charged or credited to our deposit account number 04-2219, referencing our docket number 13745.

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**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited as First Class Mail with the United States Postal Service in an envelope addressed to: Commissioner of Patents PO Box 1450, Alexandria, VA 22313-1450, on 12 December 2005.

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